

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 2106 of 1990

Date of decision : November 29, 2010

Sanwaria Girdhari,

..... Petitioner

v.

Haryana State Electricity Board and others,

..... Respondents.

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Dinesh Kumar, Advocate
for the petitioner.

Mr. Narinder Hooda, Advocate
for the respondents.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

AJAY TEWARI, J (Oral)

By this writ petition, the petitioner claims that he should be granted pay for two years Special Engineering Degree Course which he cleared as an inservice candidate.

It is not disputed that when the petitioner applied for study leave, there was no policy governing the conditions thereof. Leave was granted to the petitioner to pursue the course on the execution of an affidavit from him wherein he mentioned as follows :-

- “ 1. That all the expenses would have to bear by me.
2. That I will serve the Board for a period of 2 years after acquiring higher qualification.
3. That I will not claim any benefit except those given by the Board from time to time as a result of higher qualification.
4. That for study period I will apply leave which will be at liberty of the Board for consideration on merit.”

Subsequently, the respondents formulated a policy to govern the conditions for grant of paid study leave. Condition No.1 thereof was to the following effect :-

- “ i) The candidate seeking admission in the Degree Course should have atleast 5 years Regular Service in the Board.”

Since on the date of applying, the petitioner did not qualify the above mentioned condition, his prayer was declined. At that stage, the petitioner filed CWP No.12431 of 1989, which was disposed of with a direction to the respondents to pass a speaking order. Even in the speaking order dated 12.1.1990, it has been mentioned that since the petitioner does not fulfill the essential qualification of having 5 years regular service, the benefit of paid leave cannot be granted to him. The case of another person which was relied upon by the petitioner was distinguished on the ground that such person had five years service to his credit.

Counsel for the petitioner has laid stress particularly on para 3 of the policy which is to the following effect :-

- “ 3. The above decision of the Board would also be applicable to the officials, who have joined a regular course.”

As per the counsel for the petitioner, under para 3 the petitioner would be covered, since he had already joined the regular course.

However, counsel for the respondents states that the said para 3

would be applicable to those officials who may have joined prior to the policy and fulfilled the condition and that it would not enure to the benefit of the petitioner.

In my opinion, the argument of counsel for the respondents has to be accepted. It cannot be lost sight of that on the date the petitioner applied, there was no provision for grant of paid study leave. The petitioner was granted study leave on the basis of the affidavit sworn by him. In the circumstances, he cannot be held to be entitled to the benefit of the policy.

Counsel for the petitioner has further argued that since the predominant factor of the policy is that study leave benefits not only the employee but the employer also, such a pedantic interpretation should not be given. He has laid stress particularly on the fact that since the passing of the course, the petitioner has been in service of the respondents and, thus, the benefit of his acquiring higher professional qualification has definitely enriched his job profile. He further states that even in the policy, the safeguard incorporated by the respondents is that the person will undertake to serve the respondents for a period of five years after finishing the Course (so that due benefit of his higher qualification can be derived by the respondents). As per the learned counsel, the petitioner has been in service of the Board throughout and, thus, he has fulfilled the condition of not only five years service but more than two decades of service.

In my opinion, this argument of counsel for the petitioner would not be the determinative, as the Court is mindful of the fact that the condition to which the petitioner subjected himself was only two years service. As per his affidavit, he could have left the service after two years

and the respondents could have raised no grievance against it.

Counsel for the petitioner has further argued that para 3, quoted above, makes it clear that the condition of five years service is only prospective in nature and cannot be retrospectively applied to those persons who have already availed the benefit. He has also argued that once the name of the petitioner was sponsored he could not be denied the benefit.

As regards the first argument, it cannot be accepted for the simple reason that prior to the policy there was no provision relating to the grant of paid study leave. Thus, there is no question of adjustment or any retrospectivity to this stipulation. As regards the second argument, the same can be disposed of by observing that right to unpaid study leave is totally different to the right of paid study leave and merely because the petitioner had been sponsored for study leave, which at that time could not be paid study leave (for want of any policy in this regard), it did not entitle him to claim right that his sponsorship was under the new policy.

Consequently, finding no merit in this writ petition, the same is dismissed with no order as to costs.

November 29, 2010.
`kk'

(AJAY TEWARI)
JUDGE